IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Serial No.:	09/849,291	**Conf. No.:**	8622
Filing Date:	05/04/2001	**Art Unit:**	3623
Applicant:	Friedlander *et al.*	**Examiner:**	Sterrett, Jonathan G.
Title:	SYSTEM AND METHOD FOR IMPLEMENTING TECHNICAL CHANGE IN AN ORGANIZATION HAVING MULTIPLE HIERARCHIES	**Docket No.:**	BLD9 2001 0003US1 (IBME-0008)

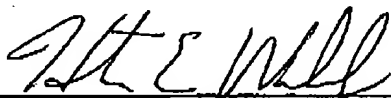## COMMISSIONER FOR PATENTS

DESTINATION FACSIMILE NUMBER: 571-273-8300

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BRIEF OF APPELLANTS

This is an appeal from the Final Rejection dated December 2, 2005, rejecting claims 1-

33. This Brief is accompanied by the requisite fee set forth in 37 C.F.R. 1.17 (c).

REAL PARTY IN INTEREST

International Business Machines Corporation is the real party in interest.

RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences.

STATUS OF CLAIMS

As filed, this case included claims 1-33. Claims 1-33 remain pending. Claims 1-33 stand rejected and form the basis of this appeal.

STATUS OF AMENDMENTS

No amendment has been submitted in response to the After Final Rejection filed by the Office on December 2, 2005.

SUMMARY OF THE CLAIMED SUBJECT MATTER

The present invention provides a system and method for implementing technical change in an organization having multiple hierarchies. Specifically, the present invention provides an analysis system that uses both qualitative and quantitative measures to determine a predicted response to technical change. The predicted response is then compared to a "normal" or required level to determine any difference. Based on the difference, if any, corrective actions are recommended. The system and method of the present invention allow the technical change to be implemented with little or no adverse reaction from the hierarchies within the organization.

Claim 1 claims a computer implemented method for implementing technical change in an organization having multiple hierarchies, (see e.g., page 8, lines 22-24; FIG. 1, item 28) comprising the steps of: prior to implementing the technical change in the organization: (see e.g., page 12, lines 9-10) querying a hierarchy in the organization to obtain a baseline response; (see e.g., page 12, line 7 through page 14 line 2; FIG. 2, item 42 and 44) quantifying the baseline response into a raw score by assigning a value to each baseline response; (see e.g., page 14, lines 3-13; FIG. 2, item 46) modifying the raw score using at least one modifier that relates to a

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response to change to yield a skill score; (see e.g., page 14, line 14 through page 15, line 21; FIG. 2, item 48) and comparing the skill score to a predetermined required score to determine a predicted response to the technical change (see e.g., page 15, line 22 through page 17 line 10; FIG. 2, items 50 and 52).

Claim 10 claims a computer implemented method for implementing technical change in an organization having multiple hierarchies, (see e.g., page 8, lines 22-24; FIG. 1, item 28) comprising the steps of: prior to implementing the technical change in the organization: (see e.g., page 12, lines 9-10) querying each of the hierarchies in the organization; receiving a set of hierarchy responses to the querying; (see e.g., page 12, line 7 through page 14 line 2; FIG. 2, item 42 and 44) quantifying the set of responses into a raw score by assigning a value to each baseline response; (see e.g., page 14, lines 3-13; FIG. 2, item 46) modifying the raw score using at least one modifier that relates to a response to change to yield a skill score; (see e.g., page 14, line 14 through page 15, line 21; FIG. 2, item 48) comparing the skill score to a predetermined required score to determine a predicted response to the technical change; (see e.g., page 15, line 22 through page 17 line 10; FIG. 2, items 50 and 52) and recommending a corrective action based on the predicted response; and implementing the technical change in the organization (see e.g., page 17, line 11 through col. 18, line 11; FIG. 2, item 54).

Claim 15 claims a program product stored on a recordable medium for implementing technical change in an organization having multiple hierarchies, (see e.g., page 8, lines 22-24; FIG. 1, item 28) which when executed, comprises: program code configured to receive a set of hierarchy responses to queries (see e.g., page 12, line 7 through page 14 line 2; FIG. 2, item 44) prior to implementing the technical change in the organization; (see e.g., page 12, lines 9-10) program code configured to quantify the set of responses into a raw score; (see e.g., page 14,

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lines 3-13; FIG. 2, item 46) and program code configured to modify the raw score into a skill score using at least one modifier that relates to a response to change (see e.g., page 14, line 14 through page 15, line 21; FIG. 2, item 48).

Claim 23 claims a computer implemented system for implementing technical change in an organization having multiple hierarchies, (see e.g., page 8, lines 22-24; FIG. 1, item 28) comprising: a hierarchy response system for receiving a set of hierarchy responses to queries (see e.g., page 12, line 7 through page 14 line 2; FIG. 2, item 44) prior to implementing the technical change in the organization; (see e.g., page 12, lines 9-10) a quantification system for quantifying inputted responses into a raw score; (see e.g., page 14, lines 3-13; FIG. 2, item 46) and a modification system for modifying the raw score into a skill score using at least one modifier that relates to a response to change (see e.g., page 14, line 14 through page 15, line 21; FIG. 2, item 48).

Claim 32 claims a system for implementing technical change in an organization having multiple hierarchies, (see e.g., page 8, lines 22-24; FIG. 1, item 28) comprising: means for receiving a set of hierarchy responses to queries (see e.g., page 12, line 7 through page 14 line 2; FIG. 2, item 44) prior to implementing the technical change in the organization; (see e.g., page 12, lines 9-10) means for quantifying inputted responses into a raw score by assigning a value to each baseline response; (see e.g., page 14, lines 3-13; FIG. 2, item 46) and means for modifying the raw score into a skill score using at least one modifier that relates to a response to change (see e.g., page 14, line 14 through page 15, line 21; FIG. 2, item 48).

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GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

1. Claims 1, 3-5, 11, 12, 15, 17, 19, 21, 23, 25, 26 and 30 stand rejected under 35 U.S.C. §102(e), being anticipated by Guinta (U.S. Patent App. No. 6,161,101), hereafter "Guinta."

2. Claims 2, 7-10, 14, 16, 22, 24, 27 and 31-33 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Guinta in view of Curtis, Bill; Hefley, William E.; Miller, Sally; "People Capability Maturity Model^{SM}", Sept 1995, Software Engineering Institute, CMU/SEI-95-MM-02, sections O, L1-L4, hereafter "Hefley."

3. Claims 6, 13, 20 and 29 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Guinta.

4. Claims 18 and 28 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Guinta in view of Bobic, Michael; Davis, Eric; Cunningham, Robert; "The Kirton adaption-innovation inventory", Spring 1999, Review of Public Personnel Administration, v19n2, pp. 18-31, Dialog 01991101 47253077, hereafter "Bobic."

ARGUMENT

1. REJECTION OF CLAIMS 1, 3-5, 11, 12, 15, 17, 19, 21, 23, 25, 26 AND 30 UNDER 35 U.S.C. §102(e) OVER GUINTA

Appellants respectfully submit that the rejection of claims 1, 3-5, 11, 12, 15, 17, 19, 21, 23, 25, 26 and 30 under 35 U.S.C. 102(e) over Guinta is defective.

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987); see MPEP ' 2131, p. 2100-69. Because each and every element of claims 1, 3-5, 11, 12, 15, 17, 19, 21, 23, 25, 26 and 30 is not found in Guinta, Appellants respectfully request overrule of the rejection under 35 U.S.C. 102(e).

In the above referenced Final Office Action, the Examiner alleges that Guinta teaches quantifying the baseline response into a raw score by assigning a value to each baseline response. In support, the Examiner cites a passage of Guinta that teaches

> ...the first input may be a true/false or yes/no input, a numerical input, or a textual input. In addition, the first input may be a selection of only one item from a list of several choices. For example, with reference to the above illustration, an assessor may be asked to select one from the following list in response to the statement: very well, adequately, not well, not at all." Col. 5, line 61 through col. 6, line 1.

To this extent, Guinta teaches that first input that is supplied by the first assessor may be of various types. The Examiner then equates the quantifying of the baseline response into a raw score of the claimed invention with a passage of Guinta that teaches "[a]t this point the assessor may again answer a value (e.g., a percentage value on a 0-100 scale) that is indicative of how well the system or process is deployed." Col. 6, lines 41-44. The Examiner interprets this passage of Guinta as indicating a percentage scale "...that is indicative of the assessed answer." Final Office Action, page 4. However, the assessor that enters the percentage value on the 0-100

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scale is the same assessor that supplies the first input. See col. 5, line 65. To this extent, the assessor is the person being queried and not a person or process that takes the first input and modifies it in some way. Col. 6, lines 32-39. As such, the input that is entered as a percentage value on the 0-100 scale is not a modification of the first input, but is instead input that is originally given in response to a question, such as how well a process is being implemented. Col. 6, lines 32-39. To this extent, Guinta does not teach that its assessor in any way quantifies the originally given response by assigning a value to the previously given response.

In contrast, the claimed invention includes "...quantifying the baseline response into a raw score by assigning a value to each baseline response." Claim 1 and similarly in claims 15 and 23. As such, in contrast to the various types of responses of Guinta that include a percentage value on a 0-100 scale, The claimed invention quantifies the baseline response into a raw score by assigning a value to each baseline response. For the above reasons, the quantifying of the baseline response of the claimed invention is not taught by the various input types of Guinta.

In the above referenced Final Office Action, the Examiner alleges that Guinta teaches modifying the raw score using at least one modifier that relates to a response to change to yield a skill score. Initially, as stated above, Guinta does not teach the raw score that is generated by quantifying a baseline response, as in the claimed invention. Further, the passage of Guinta cited by the Examiner as teaching modifying the raw score of the claimed invention, teaches a second input that "...reflects how extensively the organization process or system is actually deployed to address [the] issue [indicated by the first input]." Col. 6, lines 54-56. This second input may then be multiplied by the first input "...to provide a multiplied evaluation factor that combines the characteristics of both inputs." Col. 7, lines 34-37. However, the second input that is multiplied in Guinta is "...an assessment of how extensively processes or system s are actually

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deployed versus theoretically deployed." Col. 6, lines 46-48. To this extent, the second input is

Guinta reflects a current status of a process or system, and not a modifier that indicates how an

organization responds to change in anticipation to a particular technical change.

The claimed invention, in contrast, includes "...modifying the raw score using at least

one modifier that relates to a response to change to yield a skill score." Claim 1 and similarly in

claims 15 and 23. As such, the modifying of the claimed invention does not merely multiply by

a value that assesses current extensiveness of deployment of processes or systems such as the

second input of Guinta, but rather uses at least one modifier that relates to a response to change.

For the above reasons, the multiplying using the second input of Guinta does not teach the

modification step of the claimed invention. Accordingly, Appellants request that the rejection be

withdrawn.

In the above referenced Final Office Action, the Examiner alleges that Guinta teaches

comparing the skill score to a predetermined required score to determine a predicted response to

the technical change prior to implementing the technical change in the organization. Instead, the

passage of Guinta cited by the Examiner teaches that

> The corrective action system suitably analyzes the data accumulated by the information
> gathering system to identify problem areas and explore resolution of the problems...the
> corrective action system suitably initially analyzes the data gathered by the information
> gathering system to detect problem areas...To identify specific problem fields, the
> summarized results are compared to selected thresholds." Col. 11, lines 34-49.

To this extent, the comparison performed by the corrective action system of Guinta is done in

order to identify problems in an existing organization process or system and resolve the problem

that is identified. See also col. 11, line 59 through col. 12, line 35. As such, the comparing of

Guinta does not predict a response to an upcoming technical change but rather identifies a

problem area that needs to be resolved. Furthermore, nowhere does Guinta even disclose

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contemplation of a technical change (e.g., implementation of a new software application, installation of new hardware, etc).

In contrast, the claimed invention includes "...prior to implementing the technical change in the organization...comparing the skill score to a predetermined required score to determine a predicted response to the technical change." Claim 1 and similarly in claim 15. As such, in contrast to Guinta in which the goal is to identify and resolve a current problem, the comparing of the claimed invention is to determine a predicted response to a technical change prior to implementing the technical change in the organization. Accordingly, Guinta does not teach each and every feature of the claimed invention.

B. REJECTION OF CLAIMS 2, 7-10, 14, 16, 22, 24, 27 AND 31-33 UNDER 35 U.S.C. §103(a) OVER GUINTA IN VIEW OF CURTIS

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify a reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. Appellants respectfully submit that the Benson and Mooney references, taken alone or in combination, fail to meet each of the three basic criteria required to establish a *prima facie* case of obviousness. As such, the rejection under 35 U.S.C. §103(a) is defective.

Appellants initially incorporate the above enumerated arguments. Additionally, in the above referenced Final Office Action, the Examiner alleges that Guinta teaches or suggests recommending a corrective action based on the predicted response. As stated herein, Guinta does not teach predicting a response to a proposed change, but rather identifying and resolving a

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current problem. As such, the "...suggest[ing of] guidelines for the organization to improve the weaknesses" of the cited passage of Guinta suggests guidelines to improve current weaknesses identified by Guinta and is not based on a predicted response to change as in the claimed invention. Thus, the cited references do not teach or suggest each and every feature of the claimed invention.

C. REJECTION OF CLAIMS 6, 13, 20 AND 29 UNDER 35 U.S.C. §103(a) OVER GUINTA

Appellants initially incorporate the above enumerated arguments. Additionally, in the above referenced Final Office Action, the Examiner alleges that Guinta teaches or suggests each query comprises a set of questions, with each question in the set of questions in a yes/no/sometimes format. The Examiner admits that Guinta does not teach a yes/no/sometimes format, much less that each question in the set of questions is in a yes/no/sometimes format. Final Office Action, page 20. Instead, the Examiner takes Official notice that "...it is old and well known in the art for queries to have an answer as 'sometimes'." Final Office Action, page 20. Appellants assert that the Examiner's factual assertion is not properly based upon common knowledge. For example, Appellants assert that a query of an organization to obtain a baseline response used to determine a predicted response to a technical change in the organization, wherein each question in the query is in a yes/no/sometimes format is not obvious to one skilled in the art as asserted by the Examiner. Accordingly, the Examiner has failed prove a *prima facie* case of obviousness.

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D. REJECTION OF CLAIMS 18 AND 28 UNDER 35 U.S.C. §103(a) OVER GUINTA IN VIEW OF BOBIC

Appellant initially incorporates the above enumerated arguments. Additionally, in the above referenced Final Office Action, the Examiner alleges that it would be obvious to combine Guinta and Bobic. The Examiner admits that Guinta does not teach that the modifier used to modify the raw score comprises at least one of a stiffness modifier that relates to how a particular type of organization traditionally responds to change and an individual modifier that relates to how a particular individual traditionally responds to change. Final Office Action, page 21. Instead, the Examiner cites a passage of Bobic that that Examiner claims provides scores that measure how an individual traditionally responds to change by helping to quantify them as either an innovator or adaptor.

Even assuming, *arguendo*, that the Examiner's interpretation of Bobic is correct there is no motivation or suggestion in the references themselves or elsewhere in the art to incorporate the quantification of Bobic into Guinta. Initially, as stated above, Guinta neither teaches nor suggests predicting a response to change. Thus, Guinta and Bobic are in different fields of art. Furthermore, one goal of Guinta is to address a problem with surveys in validation of the accuracy and truthfulness of the answers received. Col. 1, lines 33-35. Guinta implements its solution to this problem using the second input to verify the data of the first input. Col. 6, line 32 through col. 7, line 14. It is this second input of Guinta that the Examiner equates with the modifier of the claimed invention and that the Examiner seeks to replace with the scores of Bobic that measure how an individual traditionally responds to change. However, this replacement would change the essential nature of the second input that Guinta uses to verify responses and would, thus, cause Guinta to not be able to verify its first input responses. As such, the combination of Bobic with Guinta would defeat the intended function of Guinta. Thus,

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the Examiner has failed to prove a *prima facie* case of obviousness.

CONCLUSION

In summary, Appellants submit that claims 1-33 are allowable because Guinta fails to teach each and every feature of the claimed invention and because the cited references, taken alone or in combination, fail to meet each of the three basic criteria required to establish a *prima facie* case of obviousness.

Respectfully submitted,

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CLAIMS APPENDIX

<u>Claim Listing:</u>

1. A computer implemented method for implementing technical change in an organization having multiple hierarchies, comprising the steps of:
    prior to implementing the technical change in the organization:
        querying a hierarchy in the organization to obtain a baseline response;
        quantifying the baseline response into a raw score by assigning a value to each baseline response;
        modifying the raw score using at least one modifier that relates to a response to change to yield a skill score; and
        comparing the skill score to a predetermined required score to determine a predicted response to the technical change.

2. The method of claim 1, further comprising the steps of:
    recommending a corrective action based on the predicted response; and
    implementing the technical change.

3. The method of claim 1, wherein the querying step the steps of comprises:
    querying a hierarchy in the organization; and
    receiving a set of hierarchy responses to the querying to yield the baseline response.

4. The method of claim 1, further comprising the step of providing queries organized into query topics for querying the hierarchy.

5. The method of claim 4, wherein the query topics comprise leadership, planning, administration, operations, quality assurance, communications, project management, and training.

6. The method of claim 4, wherein each query comprises a set of questions, with each question in the set of questions in a yes/no/sometimes format.

7. The method of claim 1, wherein the hierarchies comprise senior management, mid-level management, administrators, analysts, operations, project management, and end users.

8. The method of claim 1, wherein the querying step comprises the step of querying each of the hierarchies in the organization, and wherein a separate baseline response is obtained for each hierarchy and for the organization.

9. The method of claim 8, wherein each separate baseline response is quantified, modified and compared to a predetermined required score.

10. A computer implemented method for implementing technical change in an organization having multiple hierarchies, comprising the steps of:
    prior to implementing the technical change in the organization:

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querying each of the hierarchies in the organization;

receiving a set of hierarchy responses to the querying;

quantifying the set of responses into a raw score by assigning a value to each baseline response;

modifying the raw score using at least one modifier that relates to a response to change to yield a skill score;

comparing the skill score to a predetermined required score to determine a predicted response to the technical change; and

recommending a corrective action based on the predicted response; and implementing the technical change in the organization.

11. The method of claim 10, wherein the hierarchies are queried based on queries organized into query topics.

12. The method of claim 11, wherein the query topics comprise leadership, planning, administration, operations, quality assurance, communications, project management, and training.

13. The method of claim 11, wherein each query comprises a set of questions, with each question in the set of questions in a yes/no/sometimes format.

14. The method of claim 10, wherein the hierarchies comprise senior management, mid-level management, administrators, analysts, operations, project management, and end users.

15. A program product stored on a recordable medium for implementing technical change in an organization having multiple hierarchies, which when executed, comprises:

program code configured to receive a set of hierarchy responses to queries prior to implementing the technical change in the organization;

program code configured to quantify the set of responses into a raw score; and

program code configured to modify the raw score into a skill score using at least one modifier that relates to a response to change.

16. The program product of claim 15, further comprising:

program code configured for inputting information;

program code configured to compare the skill score to a predetermined required score to yield a predicted organizational response to the technical change; and

program code configured to output recommended corrective actions that are based on the predicted response.

17. The program product of claim 15, wherein the program code configured to quantify converts the inputted responses into values to yield the raw score.

18. The program product of claim 15, wherein the program code configured to modify performs a mathematical operation on the raw score with the modifier to yield the skill score, and wherein the modifier comprises at least one of a stiffness modifier that relates to how a particular type of

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organization traditionally responds to change and an individual modifier that relates to how a particular individual traditionally responds to change.

19. The program product of claim 15, wherein the program code configured to compare determines the mathematical difference between the skill score and the predetermined required score to yield the predicted response.

20. The program product of claim 15, wherein the queries are organized into query topics, and wherein each query comprises a set of questions, with each question in the set of questions in a yes/no/sometimes format.

21. The program product of claim 20, wherein the query topics comprise leadership, planning, administration, operations, quality assurance, communications, project management, and training.

22. The program product of claim 15, wherein the hierarchies comprise senior management, mid-level management, administrators, analysts, operations, project management, and end users.

23. A computer implemented system for implementing technical change in an organization having multiple hierarchies, comprising:
    a hierarchy response system for receiving a set of hierarchy responses to queries prior to implementing the technical change in the organization;
    a quantification system for quantifying inputted responses into a raw score; and
    a modification system for modifying the raw score into a skill score using at least one modifier that relates to a response to change.

24. The system of claim 23, further comprising:
    a comparison system for comparing the skill score to a predetermined required score to yield a predicted organizational response to the technical change; and
    an output system for outputting recommended corrective actions that are based on the predicted response.

25. The system of claim 24, further comprising:
    an input system for inputting information; and
    a score system for identifying the required score.

26. The system of claim 24, wherein the comparison system determines the mathematical difference between the skill score and the predetermined required score to yield the predicted response.

27. The system of claim 23, wherein the quantification system converts the inputted responses into values to yield the raw score.

28. The system of claim 23, wherein the modification system performs a mathematical operation on the raw score with the modifier to yield the skill score, and wherein the modifier comprises at least one of a stiffness modifier and an individual modifier.

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29. The system of claim 23, wherein the queries are organized into query topics, and wherein each query comprises a set of questions, with each question in the set of questions in a yes/no/sometimes format.

30. The system of claim 29, wherein the query topics comprise leadership, planning, administration, operations, quality assurance, communications, project management, and training.

31. The system of claim 23, wherein the hierarchies comprise senior management, mid-level management, administrators, analysts, operations, project management, and end users.

32. A system for implementing technical change in an organization having multiple hierarchies, comprising:

    means for receiving a set of hierarchy responses to queries prior to implementing the technical change in the organization;

    means for quantifying inputted responses into a raw score by assigning a value to each baseline response; and

    means for modifying the raw score into a skill score using at least one modifier that relates to a response to change.

33. The system of claim 32, further comprising:

    means for inputting information; means for comparing the skill score to a predetermined required score to yield a predicted organizational response to the technical change; and

    means for outputting recommended corrective actions that are based on the predicted response.

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EVIDENCE APPENDIX

A definition of the word session from TechEncyclopedia at www.techweb.com.

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RELATED PROCEEDINGS APPENDIX

No decisions rendered by a court or the Board in any proceeding are identified in the related appeals and interferences section.